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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,421	04/23/2002	John D Puskas	ICT 141	3303
44260 7590 06/16/2009 LAW OFFICE OF COLLEN A. BEARD, LLC P. O. BOX 1064 DECATUR, GA 30031-1064				
EXAMINER				
MANUEL, GEORGE C				
ART UNIT		PAPER NUMBER		
3762				
MAIL DATE		DELIVERY MODE		
06/16/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/980,421

Applicant(s)

PUSKAS, JOHN D

Examiner

George Manuel

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-16 and 41-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-16 and 41-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's arguments filed 7/23/08 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., stimulation of the vagus nerve) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject

matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-16, 41-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pless et al (US 4,640,298) in view of Puskas (US 7,072,720).

Pless et al disclose an esophageal electrode probe adapted to provide effective emergency transesophageal pacing under indications including asystole. The device works with low current intensities and potential differences. One of ordinary skill in the art would have found it obvious to use the device to control intermittent asystole because Pless et al teach in case of asystole where the heart emits no EKG recordable impulses, stimulation signals will be applied by all the electrodes until the heart begins beating again and EKG signals can be recorded.

Pless et al lack a teaching to stimulate a vagus nerve.

Puskas teaches the vagus nerve may be effectively and easily stimulated with a single basket or balloon or steerable wire device in the internal jugular vein, esophagus or trachea. FIG. 9A shows a tube balloon electrode device for insertion into the trachea or esophagus. FIG. 3E shows a wire electrode wherein the expansion means is shape memory.

One of ordinary skill in the art would have found it obvious to combine the vagus nerve and shape memory teachings of Puskas with the esophageal electrode teachings of Pless et al to more effectively treat a patient with electrical stimulation.

Regarding claims 13 and 49, Pless et al fails to disclose electrode expanding means comprising a metallic shape memory means or the electrode spirally arranged. One of ordinary skill in the art would have found these features to be obvious based on the teachings of Puskas. In addition, variations of the electrically conductive material 5 in Pless et al are fitted in rectangular bands longitudinally on the probe and sheath 3 and provide equivalent electrode structures for the function of expansion/retraction in an equivalent radial direction.

Regarding claim 15, one of ordinary skill in the art would have found it obvious to provide a handle and hub for the electrical circuit 20 to provide positioning and handling of the probe and for ensuring precise application the electric pulses to the expandable electrodes on the stimulation probe comprising central tube 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.

/George Manuel/
Primary Examiner
Art Unit: 3762

